

Remarks/Arguments

Reconsideration of this application, as amended, is respectfully requested.

I. Status of the Claims

After entry of these amendments, claims 1-46 are pending. There are no claim amendments.

II. Restriction Requirement

In the office action mailed August 22, 2008, the Examiner requires restriction among one of the following three groups, as follows:

Group I: Claims 1-32, drawn to 3-fluoropiperidine compounds;

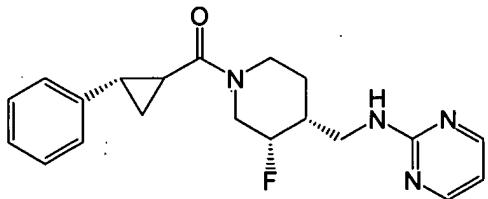
Group II: Claims 33-37, drawn to pharmaceutical compositions; and

Group III: Claims 38-46, drawn to method of treatment for various diseases;

In response, applicants elect the Group I compound claims, with traverse.

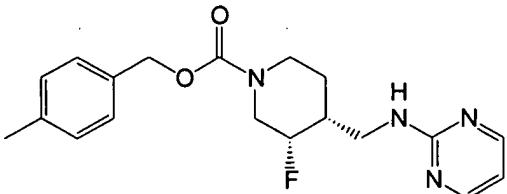
The Examiner requires a further restriction in view of the election of the Group I claims. The Examiner requires election of a particular point of attachment of the -NH- group to the "HetAr" group.

In response, applicants elect compounds in which the -NH- group is attached *ortho* to the nitrogen atom on the HetAr ring, to include compounds of the type:



depicted in the response to the office action.

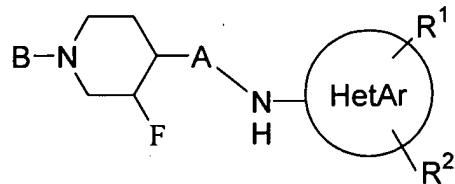
The Examiner also requires election of a single species, in the event that no generic claim is allowable. In response, applicants elect the species of Example 1:



wherein A is CH₂, HetAr is pyrimidine; R¹ and R² are each hydrogen; and B is 4-methylbenzyl.

III. Traversal of Restriction Requirement

The Examiner asserts that the claims lack unity of invention, and that the proper unity of invention is "the 3-fluoropiperidine unit." Applicants respectfully traverse this rejection, on the grounds that it is not seen how the claims lack unity, since the "3-fluoropiperidine unit" is required by all pending claims. In fact, not only "the 3-fluoropiperidine moiety," but rather the full genus of formula (I):



is included in all Group II claims (claims 33-37, all of which depend from claim 32, which in turn depends from claim 1) and Group III claims (claims 38-46, all of which depend from claim 1).

Hence, it is believed that all claims should properly be examined in this application.

IV. Rejoinder

In addition to the traversal, the Examiner is reminded of the rejoinder provisions of M.P.E.P. § 821.04, which provides for rejoinder of process claims which are dependent from or include all the limitations of an allowable product claim. Further, the PCT administrative instructions on Unity of Invention state that for claims to a product, unity of invention permits inclusion of "an independent claim for the use of said product." See M.P.E.P., Annex B, Unity of Invention, Sect. (e)(i).

Thus, the Group III claims should be rejoined upon a determination of allowability of the Group I claims.

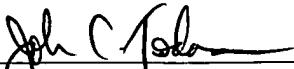
V. Conclusion

In view of the action taken, it is believed that the restriction requirement should now be withdrawn, and all pending claims should now be examined.

An early and favorable examination is earnestly solicited.

Respectfully submitted,

By


John C. Todaro, Reg. No. 36,036
Attorney for Applicants

MERCK & CO., Inc.
P.O. Box 2000
Rahway, New Jersey 07065
Tel.: (732) 594-0125

Date: September 22, 2008